DOCUMENT RESUME

ED 373 006 SO 024 309

TITLE	Sexual Harassment in Employment Costs When...
INSTITUTION	West Virginia State Dept. of Education, Charleston.
PUB DATE	92
NOTE	6p.; Printed on colored paper.
AVAILABLE FROM	West Virginia Department of Education, 1900 Kanawha Boulevard, East, Building 6, Room 252, Charleston, WV 25305.
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Elementary Secondary Education; Employed Women; Employee Attitudes; *Employer Employee Relationship; *Equal Opportunities (Jobs); Quality of Working Life; *Sexual Harassment; *Work Environment
IDENTIFIERS	West Virginia

ABSTRACT

This brochure was developed by the West Virginia Project for the Elimination of Sex Discrimination to inform boards of education, school administrators, and other supervisory staff that sexual harassment in educational institutions is not simply inappropriate behavior. It is against the law. This document provides information to assist the state and its school districts with their legal obligations to prevent sexual harassment in employment. The goal of the West Virginia Board of Education is to provide all employees, both females and males, equal opportunities that include an environment that is free from sexual harassing influences or actions in the employment process. The booklet states that sexual harassment in employment costs when: (1) it undermines employees' work performance; (2) it affects employees' emotional well being, making them feel confused, angry, helpless, and alone; (3) it is used as a tactic to coerce or intimidate employees; and (4) it continues to happen unchecked. The document defines sexual harassment according to the Title VII guidelines. The following questions are discussed: (1) What have people done who have been harassed? (2) What can boards of education and administrators do to prevent sexual harassment? and (3) What is the legal basis for preventing sexual harassment in employment? A list of 7 sources is provided. (Author/DK)

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SEXUAL HARASSMENT IN EMPLOYMENT COSTS WHEN:

- It undermines employees' work performance.
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- It is used as a tactic to coerce or intimidate employees.
- It continues to happen unchecked.

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West Virginia Department of Education

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FOREWORD

> **Sexual harassment is now recognized to be a serious problem in schools as well as in the workplace. Victims may suffer academically and socially, and at times there is also serious physical harm. Everyone...must take responsibility for preventing sexual harassment.[1]**

This brochure was developed by the West Virginia Project for the Elimination of Sex Discrimination to inform boards of education, school administrators and other supervisory staff that: Sexual harassment in educational institutions is not simply inappropriate behavior; it is against the law.[2]

> **In May 1980 the EEOC (Equal Employment Opportunity Commission) issued guidelines for the elimination and prevention of sexual harassment of employees. The guidelines state that the employer is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer regardless of whether the employer knew or should have known of their occurrence.[3]**

Further, this document provides information to assist the State and its school districts with their legal obligations to prevent sexual harassment in employment.

PURPOSE

One of the goals of the West Virginia Board of Education is to provide all employees (females and males) equal opportunities that include an environment that is free from sexual harassing influences or actions in the employment process.

IMPACT

The implications of sexual harassment are far-reaching as indicated in its costs listed on this document's cover and as indicated in other areas of this document. The specific impact of this document will be that more females as well as males will become aware they are to be provided a sexual-harassment free work environment that enables them to reach their maximum potential for work.

WHAT IS SEXUAL HARASSMENT ?

Sexual harassment is defined in Title VII guidelines as:

> **Unwelcome sexual attention, requests for sexual favors, and other verbal or physical conduct of a sexual nature... when (1) submission to such conduct is made either explicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.[3]**

> **Unwelcome sexual attention from a boss is seldom due to...personal allure; it's a weapon used to coerce women. ...It is a power play.[4]**

WHAT HAVE PEOPLE DONE WHO HAVE BEEN HARASSED ?

In response to the harasser, the victims have:

- **Talked with others to see if they had also been harassed.[4]**
- **Asked a person to assist them in talking with the harasser.[5]**
- **Told the harasser to stop because it was against the law.[7]**
- **Kept written records of the time, place and actions by the perpetrator to document incidences of the sexual harassment.[1]**
- **Asked what the grievance process was to be used for sexual harassment, and how they could file a complaint.[1]**
- **Filed complaints with the institution and/or with the Office for Civil Rights.[1]**
- **Used publicity and exposure of the tactic as a defense against it.[4]**

WHAT CAN BOARDS OF EDUCATION AND ADMINISTRATORS DO TO PREVENT SEXUAL HARASSMENT ?

State and county school boards and administrators need to aggressively protect employees from harassment. They need to:

- **Take all necessary steps to prevent sexual harassment from happening in the first place which includes:**
  - **Informing employees of their rights and making sure everyone knows about and understands the school system's procedure for dealing with complaints from employees alleging sexual harasment.[4]**
- **Establish a sexual harassment training and prevention program for school employees.[2]**
- **If sexual harassment does occur, intervene immediately by separating the complainant from the alleged offender and launching an investigation.[6]**
- **Don't look the other way....[6]**

The internal procedure for filing and processing employee complaints of harassment should provide at least two alternative routes /since the harassers are often immediate supervisors/. That gives employees a route for processing their complaints other than through the perpetrator of the harassment.[3]

Boards of education and administrators who ignore the issue of sexual harassment may find their school district vulnerable to court-assessed remedies, adverse publicity, and a reputation that undermines citizen support for schools.[3]

Some examples of sexual harassment in the workplace include:

- **Deliberate assaults,[5] rape or attempted rape;[1]**
- **" Accidental " brushes or touches;[5]**
- **Degrading comments or jokes directed at one sex;[5]**
- **Demanding sexual favors accompanied by implied threats about the person's employment status, or implied promises of preferential employment status;[5] and**
- **Catcalls, whistles, obscene references to a person's anatomy.[5]**

The research on **Sexual Harassment in the Federal Government: Update (1988), A report to the President and the U. S. Congress** by the U. S. Merit Systems Protection Board revealed that, of the 23,000 federal civilian employees responding, 42 percent of the women and 14 percent of the men had experienced sexual harassment in some form. Other surveys also reveal that women are victims of sexual harassment far more often than are men.[3]

WHAT IS THE LEGAL BASIS FOR PREVENTING SEXUAL HARASSMENT IN EMPLOYMENT ?

The Equal Employment Opportunity Commission's "Final Amendment to Guidelines on Discrimination Because of Sex" and Title VII of the Civil Rights Act of 1964 serve as a legal basis for preventing sexual harassment in employment. Title IX of the Education Amendments of 1972 and state statutes provide the legal basis for preventing sexual harassment and sexual abuse of students.

In a 1981 Washington, DC, landmark decision, the U. S. Supreme Court of Appeals ruled that:

> **...the plaintiff did not have to show any loss of tangible benefits. The 'psychological and emotional work environment' was indeed part of the conditions of employment, according to this decision, and employees had the right to a work environment free from sexual harassment.[3]**

In 1986 the U. S. Supreme Court ruled that states, their county boards of education and their employees can be held liable for sexual harassment under Title VII of the Civil Rights Act of 1964,[1] and the Supreme Court has affirmed the right of an individual to pursue private legal action under Title IX.[2]

Some examples of liability include: Federal funds are discontinued (Title IX); monetary compensation has been awarded for back pay (Title VII); benefits and damages due to loss have been awarded for physical and emotional injury (civil suits); jobs have been reinstated (Title VII); employers have been fired for not providing a safe and healthful work place (OSHA).[1]

Sources:

1. Freda Klein, Nancy Wilbur, Nan Stein, Ed.D., et al, **WHO'S HURT AND WHO'S LIABLE: Sexual Harassment in Massachusetts Schools, A Curriculum Guide for School Personnel,** Quincy Massachusetts: Department of Education, 1986, Cover Page, pp. 9, 17, 19, 20 & 21.

2. **SEXUAL HARASSMENT: IT'S NOT ACADEMIC,** Washington, DC: U. S. Department of Education, Office for Civil Rights, Sept. 1988, pp. 1, 3 & 4.

3. Joyce Kaser, Ed.D., and Marlene Ross, Ed.D., **"Preventing Sexual Harassment of School Employees", EDUCATIONAL LEADERSHIP,** Alexandria, VA: Assoc. for Supervision and Curriculum, Nov. 1983, pp. 54, 55, 56 & 57.

4. Betty Lehan Harragan, **"Sexual Harassment In The Office", SAVVY,** New York, NY: Family Media, Inc., Sept. 1980, pp. 20 & 22.

5. **"SEXUAL HARASSMENT IN EMPLOYMENT"**, Wilmington, DE: State of Delaware Personnel Office, 1981, unnumbered.

6. Julie Underwood, Esq., **"End Sexual Harassment of Employees or Your Board Could Be Held Liable", AMERICAN SCHOOL BOARD JOURNAL,** Alexandria, VA: National School Board Assoc., April 1987, pp. 43 & 44.

7. Sexual harassment incidents reported to State Coordinator/Director for Elimination of Sex Discrimination (names of individuals and dates are omitted to protect those people).

WEST VIRGINIA DEPARTMENT OF EDUCATION
ADMINISTRATION

Henry Marockie, State Superintendent of Schools

Bill Luff, Associate State Superintendent of Schools Division of Research, Technology and Professional Services

Sandra Bing, Director, Office of Research Coordination, Division of Research, Technology and Professional Services

Dee Butler, State Coordinator/Director for Elimination of Sex Discrimination

Building 6, Room 252
1900 Kanawha Blvd., East
Charleston, WV 25305

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Published 1991-92, Revised 1993-94

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WEST VIRGINIA TECHNICAL ASSISTANCE PROJECT FOR ELIMINATION OF SEX DISCRIMINATION

CONSULTANTS: Dr. Joyce Kaser, Special Consultant, The Mid-Atlantic Equity Center; **Ms. Carolyn Arrington,** Assistant Superintendent and **Dr. Sandra Bing,** Director, Office of Research Coordination, Division of Research Technology and Professional Services.